STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

FACE,
Petitioner,

v

MTT Docket No. 323541

City of Clare,
Respondent.

Tribunal Judge Presiding
Jack Van Coevering

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION AND DISMISSING TAX YEAR 2005 FOR LACK OF SUBJECT-MATTER JURISDICTION

Petitioner, FACE, is appealing the assessment of property taxes levied by Respondent for the 2005 and 2006 tax years. Petitioner requests that the Tribunal order Respondent to reimburse Petitioner in the amount of $10,892.06 for property taxes paid even though Petitioner qualified as a tax exempt organization and find that Petitioner is a tax-exempt organization.

On August 1, 2006, Petitioner filed a Motion for Summary Disposition pursuant to TTR 111(4) and MCR 2.116(C)(10). Petitioner contends that it is exempt from property taxes under MCL 211.7o and MCL 211.7n,[1] and Respondent should remit $10,892.06 for inappropriate billing and payment of taxes. In the alternative, Petitioner requests that if the Tribunal were to conclude that it does not have jurisdiction over the appeal of the 2004 exemption,[2] Petitioner claims that it is

[1] The Tribunal reserves all judgment on the issue whether Petitioner qualifies for an exemption under MCL 211.7n because such analysis is unnecessary in light of the remainder of this Order.

[2] In its Petition, Petitioner requested that the Tribunal find that it is entitled to reimbursement "for property taxes paid to it for the tax years 2005 and 2006, amounting to $10,892.06[.]" However, in its Motion for Summary Disposition, Petitioner states:

> "FACE respectfully requests that this tribunal find in its favor pursuant to MCR 2.116(C)(10) and find that Petitioner is a tax-exempt organization for the purposes of property tax collection in the State of Michigan pursuant to MCLA 211.7o and MCLA 211.7n. Furthermore, that FACE is entitled to reimbursement from the City of Clare for inappropriately billed and paid property taxes amounting to $10,892.06. However, should the Tribunal find that it does not have jurisdiction over the appeal of the 2004 tax exemption; FACE respectfully requests that it is entitled to reimbursement from the City of Clare for inappropriately billed and paid property taxes amounting to $8,786.11."

While Petitioner's Motion for Summary Disposition and initial Petition are not in congruence with regard to the tax years at issue, this fact has no bearing on the Tribunal's determination because the Tribunal does not have jurisdiction over the 2004 tax year. Petitioner failed to challenge the 2004 tax bill and/or the Respondent's denial of the exemption at the local Board of Review. Pursuant to MCL 205.735(2), the Tribunal lacks jurisdiction to hear Petitioner's appeal with regard to this tax year. MCL 205.735(2)("For an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute….").

entitled to reimbursement in the amount of $8,786.11. Respondent did not submit a response to Petitioner's Motion for Summary Disposition.

FINDINGS OF FACT

While there was no stipulation of facts filed with this appeal, Respondent admitted in its Answer sixteen of the twenty-two allegations Petitioner set forth in its Petition, including the following:

1. Petitioner is a nonprofit corporation section 501(1)(c)(3) of the Internal Revenue Code.
2. Petitioner was incorporated under the laws of the state of Michigan in 1979 and continues to be incorporated under the laws of Michigan.
3. The property at issue in this appeal is identified as parcel number 051-072-006-050 and is classified as commercial property. Petitioner acquired the subject property September 1, 2004 and continues to own the subject property.
4. Petitioner occupies the subject property for the purposes for which it is incorporated.
5. Petitioner is primarily an educational, but also a charitable organization focused on spreading awareness and research on alcohol issues. Petitioner provides service-training with supplemental resources centered on low-risk consumption.
6. Petitioner has paid any and all taxes levied by Respondent against the subject property.
7. Petitioner did not exclusively occupy the subject property as of December 31, 2005.

In addition, the Tribunal has discerned the following facts based on documentary evidence submitted by the Tribunal:

1. Petitioner owns approximately 8,000 square feet of space and rents out 850 square feet of this space to the Clare Chamber of Commerce.
2. Petitioner is organized and operated exclusively for charitable and educational purposes.
3. Petitioner's primary objective is spreading awareness about substance abuse and conducting research on alcohol related issues.
4. Petitioner's Articles of Incorporation provides, in part, this corporation is organized and operated exclusively for charitable and education purposes relating to the field of substance abuse services, no part of the net earnings of which inures to the benefits of any private shareholder or individual.

   * * *

   In the event of dissolution, all assets, real and personal, shall be distributed to such organizations as are qualified as tax exempt.
5. Petitioner provides training programs as well as other resources used to encourage low-risk consumption of alcohol in eight counties in Michigan. Specifically, Petitioner services Arenac, Clare, Gladwin, Isabella, Midland, Mecosta, Osceola, and Roscommon counties as well as the Saginaw Chippewa Indian Reservation.

CONCLUSIONS OF LAW

A. MCR 2.116(C)(10) Standard

Under MCR 2.116(C)(10), a Motion for Summary Disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-55; 597 NW2d 28 (1999). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745, March 4, 2004, the Tribunal succinctly provided an overview of Motions for Summary Dispositions within the Tribunal.

> Motions for summary disposition are governed by MCR 2.116. A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). *JW Hobbs Corp v Mich Dep't of Treasury*, Court of Claims Docket No. 02-166-MT (January 14, 2004)[, aff'd in part rev'd in part 268 Mich App 38; 706 NW2d 460 (2005)]. This particular motion has had a longstanding history in the Tribunal. *Kern v Pontiac Twp*, [93 Mich App 612; 287 NW2d 603 (1979)]; *Beerbower v Dep't of Treasury*, MTT Docket No. 73736 (November 1, 1985); *Lichnovsky v Mich Dep't of Treasury*, [MTT Docket No. 111497; 1989 WL 162964 (November 14, 1989)]; *Charfoos v Mich Dep't of Treasury*, MTT Docket No. 120510[; 1989 WL 168004] (May 3, 1989)]; *Kivela v Mich Dep't of Treasury*, MTT Docket No. 131823[;1991 WL 52761 (March 1, 1991), rev'd 449 Mich 220; 536 NW2d 498 (1995)].

In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996), the Michigan Supreme Court set forth the following standards for reviewing Motions for Summary Disposition brought under MCR 2.116(C)(10):

> In reviewing a motion for summary disposition under MCR 2.116(c)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if affidavits or other documentary evidence show there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420, 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115, 469 NW2d

> 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237, 507 NW2d 741 (1993).

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a Motion under subsection (C)(10) will be denied. *See Arbelius v Poletti*, 188 Mich App 14, 18; 469 NW2d 436 (1991)(citing *Peterfish v Frantz*, 168 Mich App 43, 48-49; 424 NW2d 25 (1988)).

B. Tribunal Jurisdiction

Before the Tribunal can rule on any substantive issue, including Petitioner's Motion for Summary Disposition, the Tribunal must first determine if such an appeal is properly pending before the Tribunal. The jurisdiction of the Michigan Tax Tribunal is limited. *See* MCL 205.731. In order for a party to invoke the Tribunal's jurisdiction with regard to a claimed exemption, a taxpayer must protest the assessment before the local board of review. MCL 205.735(2). If a taxpayer is dissatisfied with the action taken by the local board of review, a taxpayer can invoke the Tribunal's jurisdiction by filing a petition with the Tribunal on or before June 30 of the tax year involved. MCL 205.735(3). Only if Petitioner has satisfied these initial requirements can the Tribunal move on to the question of whether Petitioner is entitled to a property tax exemption.

Pursuant to MCL 205.735, Petitioner is precluded from appealing the 2004 and 2005 assessment to the Tribunal. Petitioner submitted no evidence indicating that it protested the 2005 assessment to the local board of review. Thus, Petitioner failed to properly perfect its appeal and the Tribunal lacks jurisdiction to hear those appeals.

However, Petitioner has satisfied MCL 205.735 with regard to the 2006 assessment. Petitioner's initial Petition indicates that on March 14, 2006, Petitioner appeared before the board of review to protest the 2006 assessments levied against the subject property. In addition, Respondent's Answer admits that Petitioner did appear before the March 2006 Board of Review. Petitioner has satisfied the jurisdictional requirements of MCL 205.735 and the Tribunal has the requisite authority to render a decision regarding Petitioner's exemption claim.

C. Property Tax Exemptions

The General Property Tax Act provides "[t]hat all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. The Legislature's intention to grant exemption from taxation will never be implied from statutory language, but must be expressed in unmistakable terms or appear by necessary implication from the language used. *Stege v Department of Treasury*, 252 Mich App 183, 189; 651 NW2d 164 (2002). Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc* v *Sylvan Twp*, 416 Mich 340, 348; 330 NW2d 682 (1982). Furthermore, the Michigan Court

of Appeals, in *Mich Bell Tel Co* v *Dep't of Treasury*, 229 Mich App 200, 207-208; 582 NW2d 770 (1998), stated:

> The rule to be applied when construing tax exemptions was well summarized by Justice Cooley as follows:
>
> > [I]t is a well-settled principle that, when a specific privilege or exemption is claimed under a statute, charter or act of incorporation, it is to be construed strictly against the property owner and in favor of the public. This principle applies with peculiar force to a claim of exemption from taxation. Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and **an alleged grant of exemption will be strictly construed** and cannot be made out by inference or implication but **must be beyond reasonable doubt**. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. (quoting *Detroit* v *Detroit Commercial College*, 322 Mich 142, 149; 33 NW2d 737 (1948), quoting 2 Cooley, Taxation (4th ed.), §672, p. 1403). [Emphasis added.]

In order for an organization to qualify for a property tax exemption under MCL 211.7o, that organization must satisfy three criteria: (1) the real estate must be owned and occupied by the nonprofit organization claiming exemption, (2) the organization seeking the exemption must be a library, benevolent, charitable, educational, or scientific institution, and (3) the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated. *See Ladies Literary Club v Grand Rapids*, 409 Mich 748, 751; 298 NW2d 442, 424 (1980)(citing *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944)).[3]

The Michigan Supreme Court's decision in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), provided additional guidance with regard to the term "charitable institution" as it pertains to MCL 211.7o. In synthesizing the court's past decisions regarding property tax exemptions, the Michigan Supreme Court provided examples of facts to be considered when determining whether an organization is a "charitable institution":

---

[3] The original test articulated in *Ladies Literary Club* contained an additional prong: The claimant must have been incorporated under the laws of this State. However, this prong was later determined to be unconstitutional because it denied equal protection to institutions not incorporated in Michigan. *Chauncey & Marion Deering McCormick Foundation v Wawatam Township*, 186 Mich App 511, 514-15; 465 NW2d 14 (1990).

> (1) A "charitable institution" must be a nonprofit institution
> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity
> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered
> (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government
> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

Id. at 215.

The Tribunal finds that Petitioner has demonstrated that it is entitled to a real property exemption under MCL 211.7o. First, Petitioner satisfies the owned and occupied requirement of MCL 211.7o. Petitioner is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code. Petitioner was incorporated under the laws of the state of Michigan on September 17, 1979 and continues to be incorporated under the laws of Michigan. Petitioner purchased the subject property on September 1, 2004. Further, Respondent admitted all of the preceding allegations in its Answer. Thus, Petitioner satisfies the first prong.

Second, Petitioner qualifies as a charitable institution in light of the Michigan Supreme Court's decision in *Wexford*. As stated above, Petitioner is a qualified, nonprofit organization under section 501(c)(3) of the Internal Revenue Code. Petitioner's 1989 amended articles of incorporation state that Petitioner exists to "plan, coordinate, and oversee the delivery of substance abuse services within the eight counties…and to assist in activities related to the education of persons including production and sale of substance abuse prevention materials, and implementation of program in regard to substance abuse." Petitioner's 1989 amended articles of incorporation go on to state that the "corporation is organized an operated exclusively for charitable and educational purposes relating to the field of substance abuse services…." Petitioner's activities center on the delivery of substance abuse services to the surrounding communities. While Petitioner failed to present any evidence regarding the amount, if any, charged for its services or the value of those services, such an oversight is not fatal. The Michigan Supreme Court's decision in *Wexford* stressed that a qualifying charitable institution need not satisfy a monetary threshold of charity. *Wexford*, 474 Mich at 215. Rather, in determining whether an organization is a charitable institution, the proper inquiry relates to whether the overall nature of the institution is charitable; it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year. *Id.*

Finally, Petitioner has established that it occupies the building located on the subject property solely for the purposes for which it was incorporated. The Michigan Court of Appeals, in *Institute in Basic Life Principles, Inc v Watersmeet Twp*, 217 Mich App 7; 551 NW2d 199 (1996), adopted the standard employed in *Nat'l Music Camp v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977), and held that in determining whether property qualifies for a tax exemption, "[t]he proper test is whether the entire property was used in a manner consistent with the purposes of the owning institution." *Institute*, 217 Mich at 13. In paragraph 22 of its Answer, Respondent admitted that Petitioner occupies the subject property for the purpose for which it is incorporated.

While Petitioner has sufficiently established the requisite qualifications for an exemption under MCL 211.7o, the issue still remains whether Petitioner is entitled to the exemption considering Petitioner does not exclusively occupy the subject property. "The general rule is that a statute which in effect exempts from taxation property or buildings used for certain purposes authorizes a partial exemption of a building in case the building is used in part for exempt purposes and in part for nonexempt purposes." 71 Am Jur 2d State and Local Taxation § 306. The Michigan Court of Appeals, in *McFarlan Home v City of Flint*, 105 Mich App 728, 733-34; 307 NW2d 712 (1981), adhered to the general rule and held that property which would otherwise qualify for a property tax exemption remains eligible for such an exemption even though the property is not exclusively occupied by the person or entity that owns the property.

> This Court has previously held that property may be apportioned for purposes of granting exemptions for charitable uses. *Hospital Purchasing Service of Michigan v City of Hastings*, 11 Mich App 500, 161 NW2d 759 (1968). In *Hospital Service*, the plaintiff, a charitable organization, leased a portion of its premises to the Secretary of State. We reversed the decision of the circuit court affirming a tax assessment of the entire parcel. We interpret the italicized language, rather, to mean that the tax exemption granted by section 7 applies only to that property or part of property the substantial use of which is related to the charitable object or other qualifying norms for exemption.

McFarlan Home, 105 Mich App at 733-34. In further justifying its decision, the Court cited other jurisdictions that employed an apportionment scheme in regard to exemptions. *Id*. at 734 (citing *Cedars of Lebanon Hospital v Los Angeles County*, 221 P2d 31 (Cal 1950) and *American Sunday School Union v Taylor*, 29 A 26 (Pa 1894)).

Under the apportionment theory advanced in *McFarlan Home*, the Tribunal finds that Petitioner merits an exemption under MCL 211.7o. Petitioner admits that as of April 2005, Petitioner rented the property to two other local businesses: the Clare Chamber of Commerce and the Clare County Review. Petitioner asserts that the Clare County Review rented 976 square feet of space for a nominal fee but vacated the property in August 2005. At the time Petitioner appealed the assessments to the Tribunal, Petitioner continued to rent 850 square feet to the Clare Chamber of Commerce pursuant to a rental agreement. The building Petitioner seeks an exemption for is 8,000 square feet and Petitioner is currently renting 850 square feet to another organization whose corporate purpose is unrelated to those activities conducted by Petitioner. Thus,

Petitioner is utilizing all but approximately 10.63% of the building for the purposes for which it was incorporated and should receive a property tax exemption for such an amount.
The fact that the Clare Chamber of Commerce, although a non-profit organization, arguably would not qualify for an exemption under MCL 211.7 *et seq* does not preclude Petitioner from obtaining a tax exemption for the portion of property owned and occupied for the purpose for which it was incorporated. In *Cedars of Lebanon Hospital v Los Angeles County*, 221 P2d 31 (Cal 1950), cited with approval by the Court of Appeals in *McFarlan Home*, the California Supreme Court granted a tax exemption to a hospital but not to the "thrift shop" operated inside the hospital. *Id*. at 41. Thus, through its decisions in *McFarlan Home* and *Hospital Purchasing Service of Michigan*, as well as the citation to *Cedars of Lebanon Hospital*, the Court of Appeals has implicitly approved the use of the non-exempt portion of the property for any use, charitable or otherwise.

Finally, on October 17, 2006, the Michigan Court of Appeals in *Pheasant Ring* v *Waterford Township*, ___ Mich App ___; ___ NW2d ___ (2006), upheld the Tribunal's determination that the taxpayer was entitled to an exemption under MCL 211.7o. While *Pheasant Ring* is distinguishable from this case, the underlying rationale behind the decision is instructive and justifies the Tribunal's decision. The Court of Appeals in *Pheasant Ring* was presented with an issue similar to that in *Wexford Medical Group* v *City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006); in both cases, each respective appellate court addressed whether accepting payments for services precluded the taxpayer from qualifying for a charitable exemption under MCL 211.7o. Relying on *Wexford*, the Court of Appeals stated, "The acceptance of rental payments or imposition of fees by Pheasant Ring does not preclude its status as a 'charitable institution,' 'as long as the charges are not more than what is needed for its successful maintenance.'" *Pheasant Ring*, 3 (citation omitted). Accepting nominal payments will not destroy the status of a taxpayer as a charitable institution.

In light of case law supporting apportioning an exemption in cases where the taxpayer is not exclusively occupying the property and the fact that Respondent has not challenged Petitioner's status as a charitable institution, the Tribunal views the money obtained by Petitioner as a result of this lease similar to the nominal payments received in *Wexford* and *Pheasant Ring* and not a significant revenue stream. Petitioner receives $567.88 per month in exchange for 850 square feet of space and claims to incur approximately $935.54 per month in utility expenses in operating the building. While the Tribunal is mindful that Petitioner failed to include a copy of the lease, any terms of the lease other than the rent charged, or any copies of utility bills to support its allegations, it would appear that Petitioner is receiving less than what is needed for successful maintenance. Even with Petitioner's rental activities, Petitioner's organization continues to be charitable in nature and deserving of an exemption under MCL 211.7o.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition regarding the 2006 tax year is GRANTED.

IT IS FURTHER ORDERED that Petitioner is entitled to a property tax exemption for parcel number 051-072-006-050 in the amount of 90% and the assessed and taxable values for the 2006 tax year at issue shall be otherwise adjusted in a manner consistent with this Order.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's assessed and taxable values as reflected by this Order within 90 days of the entry of this Order, subject to the processes of equalization. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 20 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Order. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods (i) after December 31, 2002 at the rate of 2.78% for calendar year 2003; (ii) after December 31, 2003, at the rate of 2.16% for calendar year 2004; (iii) after December 31, 2004, at a rate of 2.07% for the calendar year 2005; and (iv) after December 31, 2005, at a rate of 3.66% for the calendar year 2006.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: December 20, 2006

By: Jack Van Coevering, Tribunal Chairman